



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2005

Ms. Karol H. Davidson  
Staff Attorney  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2005-02355

Dear Ms. Davidson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 220693.

The Texas Youth Commission (the "commission") received a request for information relating to an investigation involving a particular commission employee. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we address the commission's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, the information

requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, you have not submitted a copy of the request for information.<sup>1</sup> *See* Gov't Code § 552.301(e)(1)(B). Thus, you did not comply with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As a claim under section 552.101 can provide a compelling reason for non-disclosure, we will address this exception.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. Section 61.073 of the Human Resources Code provides as follows:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 61.0731, Human Resources Code, and Chapter 61, Code of Criminal Procedure.

Hum. Res. Code § 61.073. We find that the submitted information falls within the scope of section 61.073. There is no indication that the requestor would have a right of access to any of the information under section 61.093(c) of the Human Resources Code, section 58.005 of the Family Code, section 61.0731 of the Human Resources Code, or chapter 61 of the Code of Criminal Procedure.<sup>2</sup> We therefore conclude that the commission must withhold the

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<sup>1</sup>Our description of the request is based on other information that you provided in requesting this decision.

<sup>2</sup>Section 61.093(c) of the Human Resources Code provides for disclosure of information relating to a child who has escaped from custody. Section 58.005(a) of the Family Code provides that information obtained for the purpose of diagnosis, examination, evaluation, or treatment of a child by an agency providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to certain specified persons or under certain specified circumstances. Section 61.0731 of the Human Resources Code provides for the disclosure of information to a child or a child's parent or to a person having a legitimate need for information regarding a child's location and committing court. Chapter 61 of the Code of Criminal Procedure is applicable to information pertaining to criminal combinations and criminal street gangs.

submitted information under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code as information made confidential by law. As we are able to make this determination, we need not address your arguments under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

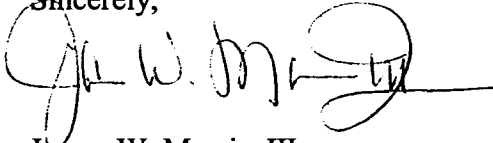
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 220693

Enc: Submitted documents

c: Ms. Donna Wilkey  
c/o Ms. Karol H. Davidson  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765  
(w/o enclosures)